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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92049029
Party	Plaintiff Mr. David J. Long, Jr.
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Submission	Other Motions/Papers
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Date	05/15/2008
Attachments	AmendedOpposition.pdf (4 pages)(116529 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark registration No. 2969604

For the mark TASTE OF SOUTH JERSEY

Date registered: July 19, 2005

David J. Long Jr.

v.

Review Publishing Limited Partnership

Opposition to the Defendant's Motion to Dismiss and Responses.

Memorandum of Law for the InValid Registration of the Mark

TASTE OF SOUTH JERSEY (2969604)

and Amendment to all previous filing of papers with the

USPTO TTAB and Commissioner of Trademarks

I, David Johnson Long Jr., the Petitioner, strongly Oppose the defendant's Motion to Dismiss and filed responses on the following grounds:

1. I, David J. Long Jr., petitioner, strongly oppose the Motion to Dismiss and other defenses, and responses as filed by Dechert LLP, attorneys for the registrant/defendant pursuant to Rule 2.117(b): Whenever there is pending before the Board a motion which is potentially dispositive of the case, the potentially dispositive motion may be decided before the question of suspension is considered regardless of the order in which the motions were filed.

2. Petitioner, the moving party, makes the motion herein pursuant to Rule 10.143. Petitioner attests that he has conferred with the opposing party or attorney for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement.

3. Petitioner asserts that by evidence of the defendant's motion and responses that there are no material issues of fact remaining to be tried.

I, the petitioner respectfully request the Commissioner of Trademarks and the Board to either:

a. Reopen the Proceeding 92049029 and refer the parties to Accelerated Case Resolution (ACR), or

b. Grant a Motion for Summary Judgement in favor of the Plaintiff/ Petitioner in the Proceeding 92049029 on the following grounds:

I. Petitioner's Exhibit A attached hereto is clear evidence that the registrant did not have First Use in Commerce for the Word mark, TASTE OF SOUTH JERSEY (2969604), and there are no material issues of fact remaining to be tried.

II. The attorney for the registrant, Glenn A. Gundersen of the law firm Dechert LLP could not have performed due diligence prior to filing an application for the Word mark, TASTE OF SOUTH JERSEY. If the registrant's attorney performed due diligence the attorney would have discovered that a similar trade name and similar product for the filed class of goods or services did indeed already exist in commerce as a business and trade name recorded with the State of New Jersey since June 21, 1999— established for the purpose of carrying on the business of "Restaurant Advertising."

III. Had the registrant's attorney performed due diligence prior to filing the application Serial Number 76594573, they would have discovered that a similar trade name and product for the class of goods or services already existed in commerce, that would cause confusion or mistake.

IV. Petitioner respectfully request that the Commissioner of Trademarks and the Board to find germane the fact that Review Publishing LP, is a business in the same industry and marketplace as the Plaintiff/Petitioner.

V. Review Publishing Limited Partnership could not have performed due diligence in its application filed for the Word mark, TASTE OF SOUTH JERSEY because the Petitioner has used the trade name, TASTE OF SOUTH JERSEY in commerce since 1999—as a Website, periodical in the field of restaurants and dining, and started broadcasting a weekly live talk radio show in the same marketplace in 2001.

VI. The common law of tort, Passing Off, is designed to prevent misrepresentation in the course of trade to the public that there is some sort of association between the business of Defendant and that of the Claimant/Petitioner. A cause of action for passing off is a form of intellectual property enforcement against the unauthorized use of a mark which is considered to be similar to another party's registered or unregistered trademark.

VII. Petitioner respectfully request that the Commissioner of Trademarks and the Board accept EXHIBIT A submitted by the Petitioner as germane to the disposition of the Motion to Dismiss made by the Defendant.

Finally, I, the petitioner respectfully request the USPTO Trademark Trial and Appeal Board and Commissioner of Trademarks to make invalid the registration of the mark 2969604 pursuant to Rule 14(1)(2)(3), or reopen the Proceeding 92049029 and refer the parties to Accelerated Case Resolution (ACR).

Respectfully submitted,

/david j. long jr./

David J. Long Jr., T/A: The Taste of South Jersey

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May 15, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of this paper filing has been duly served by mailing a copy, first class, postage pre-paid to both the law firm Glenn A. Gundersen of Dechert LLP, 4000 Bell Atlantic Tower, 1717 Arch Street, Philadelphia, PA 19103-2183, and the Defendant, Review Publishing Limited Partnership, 1500 Samson Street, 3rd Floor, Philadelphia, PA 19102

_____/david j. long jr./____